



**Billing Code: 4310-MR**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

**[Docket No. BOEM-2015-0080; MMAA104000]**

**Atlantic Wind Lease Sale 5 (ATLW5) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey—Final Sale Notice**

**AGENCY:** Bureau of Ocean Energy Management (BOEM or “the Bureau”), Interior.

**ACTION:** Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey.

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of two commercial wind energy leases on the Outer Continental Shelf (OCS) offshore New Jersey, pursuant to BOEM’s regulations at 30 CFR 585.216. BOEM is offering two leases for sale using a multiple-factor auction format: Lease OCS-A 0498 and Lease OCS-A 0499. The two lease areas (LAs) are identical to those announced in the Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore New Jersey that was published in the *Federal Register* on July 21, 2014, with a 60-day public comment period (79 FR 42361). This FSN contains information pertaining to the areas available for leasing, proposed lease provisions and conditions, auction details, lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the proposed leases resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by auction winners, will be subject to subsequent environmental and technical reviews prior to a decision to proceed with development.

**DATES:** BOEM will hold a mock auction for the qualified bidders on November 4, 2015. The monetary auction will be held online and will begin at 9:00 a.m. Eastern Time (ET) on November 9, 2015. Additional details are provided in the section entitled “Deadlines and Milestones for Bidders.”

**FOR FURTHER INFORMATION CONTACT:** Will Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia, 20166, (703) 787-1320 or [Will.Waskes@boem.gov](mailto:Will.Waskes@boem.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (OCSLA), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211 and 585.216.

**Background:** The two LAs offered in this FSN are the same areas BOEM announced in the PSN on July 21, 2014 (79 FR 42361). BOEM received 24 comment submissions in response to the PSN, which are available in the *Federal Register* docket (Docket ID: BOEM-2014-0029) through BOEM’s website at: <http://www.boem.gov/New-Jersey/>. BOEM also has posted a document containing responses to comments submitted during the PSN comment period and a list of other changes that BOEM has implemented for this lease sale since publication of the PSN. This document, entitled *Response to Comments and Explanation of Changes*, can be found at the following URL: <http://www.boem.gov/New-Jersey/>.

On February 3, 2012, BOEM published the Notice of Availability (NOA) (77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment

activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia, pursuant to the National Environmental Policy Act. Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The proposed lease areas identified in this FSN have been reduced from the areas described in the Call and the New Jersey Wind Energy Area (WEA) described in the EA, but are the same as the areas described in the PSN (79 FR 42361). An explanation regarding the reduction in the area is provided in the section entitled “Area Offered for Leasing” of the New Jersey PSN published on July 21, 2014 (79 FR 42361). The *Commercial Wind Lease Issuance and Site Characterization Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Final Environmental Assessment* can be found at:

[http://www.boem.gov/uploadedFiles/BOEM/Renewable\\_Energy\\_Program/Smart\\_from\\_the\\_Start/Mid-Atlantic\\_Final\\_EA\\_012012.pdf](http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Smart_from_the_Start/Mid-Atlantic_Final_EA_012012.pdf).

On October 19, 2012, BOEM initiated consultation with the National Marine Fisheries Service (NMFS) under the ESA for geological and geophysical (G&G) activities in support of renewable energy development offshore New Jersey, New York, Massachusetts, and Rhode Island. Formal consultation concluded on April 10, 2013, with receipt of a Biological Opinion that, along with the previous informal consultation, informed the development of the New Jersey commercial wind lease package. Additional environmental reviews will be prepared upon receipt of the lessees’ proposed project plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

## **Other Activities under BOEM's Jurisdiction**

Potential bidders should be aware of the following unsolicited request for a right-of-way (ROW) grant, and two limited leases issued by BOEM within the New Jersey WEA.

***Atlantic Grid Holdings LLC (AGH) Right-of-Way Grant Request:*** On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant. Following publication of a notice to determine competitive interest in the grant area and a 60-day public comment period, BOEM published a determination of no competitive interest on May 15, 2012 (77 FR 28620). The application and associated notices can be found at: <http://www.boem.gov/Regional-Proposals/>. On May 1, 2013, Atlantic Grid Holdings LLC submitted a supplement to their application which can found at the web address above. On December 13, 2013, at the request of AGH, BOEM granted a departure under BOEM's regulations at 30 CFR 585.103(a) extending the filing date for the General Activities Plan (GAP) until December 31, 2014. On June 2, 2014, AGH informed BOEM of a new phased development schedule. Phase 1 would consist of the installation of a point-to-point transmission system that would not support the production, transmission, or transportation of energy from sources other than oil and gas. On December 22, 2014, BOEM suspended the current application process and informed AGH that Phase 1 no longer falls under BOEM's jurisdiction and does not require an OCS lease, easement or ROW grant pursuant to subsection 8(p) of the OCS Lands Act prior to AGH moving forward with Phase I. Should AGH proceed with future phases that support the production, transmission, or transportation of energy from sources other than oil and gas, AGH will need to reinitiate the renewable energy regulatory process pursuant to 30 CFR part 585.

**Interim Policy Leases:** On November 1, 2009, BOEM issued two Interim Policy leases within the New Jersey WEA authorizing the construction, installation, and operation of meteorological towers or buoys for a term of five years. The location of each lease, the name of each lease holder, and each lease number are listed below.

<b>Lease Number</b>	<b>Lessee</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub-Block</b>
OCS-A 0472	Deepwater Wind LLC	Wilmington NJ18-02	7033	All
OCS-A 0473	Fishermen's Energy LLC	Wilmington NJ18-02	6931	H,K,L,N,O,P

These leases did not confer a right to develop a commercial offshore wind project.

Rather, the leases granted the exclusive right to conduct the activities described in each lease, which were limited to installing and operating facilities to characterize wind and environmental resources. These leases expired on November 1, 2014; BOEM requires all facilities to be removed by November 1, 2015. Electronic copies of the executed leases can be found at: <http://www.boem.gov/Renewable-Energy-Interim-Policy/>.

BOEM anticipates that both lease areas will be cleared prior to the New Jersey lease sale.

**List of Qualified Bidders:** BOEM has determined that the following companies are legally, technically, and financially qualified to hold a commercial wind lease offshore New Jersey pursuant to 30 CFR 585.106 and 107, and therefore may participate in this lease sale as bidders, subject to meeting the bid deposit requirements and other requirements described in this notice.

<b>Company Name</b>	<b>Company Number</b>

<b>Company Name</b>	<b>Company Number</b>
Convalt Energy LLC	15051
GSOE I, LLC	15009
EDF Renewable Development, Inc.	15027
Energy Management, Inc.	15015
Fishermen's Energy, LLC	15005
Green Sail Energy LLC	15045
IBERDROLA RENEWABLES, Inc.	15019
New Jersey Offshore Wind, LLC	15030
Offshore MW LLC	15010
RES America Developments Inc.	15021
Sea Breeze Energy LLC	15044
US Mainstream Renewable Power (Offshore) Inc.	15029
US Wind Inc.	15023

**Deadlines and Milestones for Bidders:** This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of leases pursuant to this sale. These are organized into three stages: (1) the FSN waiting period; (2) conducting the Auction; and (3) from the Auction to Lease execution.

1. **FSN Waiting Period.** During this period, qualified bidders must take several steps before participating in the Auction.

- *Bidder's Financial Form (BFF)*: BOEM must receive each qualified bidder's BFF by October 6, 2015. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. The BFF is available at: <http://www.boem.gov/New-Jersey/>. Once the BFF has been processed, bidders may log into *pay.gov* and submit bid deposits. BOEM will only accept an originally executed paper copy of the BFF, and will not consider any BFFs submitted by qualified bidders for previous lease sales for the purposes of this auction. The BFF must be executed by an authorized representative as shown on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).
- *Bid Deposits*: Each bidder must submit a bid deposit of \$450,000 by October 20, 2015. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.
- *Non-Monetary Package*: For bidders applying for a credit as described in the "Auction Procedures: Credit Factors" section of this notice, BOEM must receive those bidders' non-monetary packages' by October 20, 2015. Non-monetary packages must be submitted in both paper and electronic formats. BOEM considers an Adobe Portable Document Format (pdf) file stored on electronic media (e.g., flash drive) to be an acceptable format.

Further information on non-monetary packages can be found in the section of this notice entitled "Credit Factor Definitions." If BOEM does not receive

a bidder's non-monetary package by October 20, 2015, BOEM will assume that the bidder is not seeking a non-monetary auction credit and the BOEM panel responsible for determining bidder eligibility for the credit will not consider that bidder for a non-monetary auction credit.

- *Mock Auction:* BOEM will hold a Mock Auction on November 4, 2015. The Mock Auction will be held online. Only qualified bidders who have met the requirements and deadlines for auction participation, including submission of bid deposits, will be permitted to participate in the Mock Auction. BOEM will contact each qualified bidder and provide instructions for participation.

2. **Conduct the Auction:** BOEM, through its contractor, will hold an auction as described in this notice.

- *Panel Convenes to Evaluate Non-Monetary Packages:* On November 5, 2015, the panel described in the "Auction Procedures" section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, which will inform each bidder by email whether it qualifies for a non-monetary credit.
- *Monetary Auction:* On November 9, 2015, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 9:00 a.m. ET. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. If the auction does not conclude by the end of the day on November 9, BOEM will continue the auction on a schedule that will be communicated during the auction through the auction messaging and scheduling functions of the auction platform. BOEM anticipates that this means continuing the auction on



consecutive business days, as necessary, until the auction ends according to the procedures described in the “Auction Procedures” section of this notice.

- *Announce Provisional Winner:* BOEM will announce the provisional winners of the lease sale after the auction ends.
- *Reconvene the Panel:* The panel will reconvene to verify auction results.

3. **From Auction to Lease Execution.** There are several steps between the conclusion of the auction and execution of leases.

- *Bid Deposit Refund:* Once provisional winners have been announced and the panel has verified the auction results, BOEM will return bid deposits to non-winning bidders and provide a written explanation of why non-winning bidders did not win. BOEM will also return to winners the excess of any bid deposits over the cash portion of their winning bids.
- *Department of Justice (DOJ) Review:* BOEM will allow the Department of Justice (DOJ) 30 days in which to conduct an antitrust review of the auction in consultation with the Federal Trade Commission, pursuant to 43 U.S.C 1337(c).
- *Delivery of Leases:* BOEM will send three lease copies to each winner, with instructions on how to execute the leases. The first year’s rent is due 45 days after the winner receives the lease copies for execution.
- *Return the Leases:* Within 10 business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their bonus bids (i.e., winning monetary bids minus applicable non-monetary credits and bid deposits), and sign and return the three executed lease copies.

- *Execution of Leases:* Once BOEM has received the lease copies and verified that all required materials have been received, BOEM will execute the leases if appropriate.

**Areas Offered For Leasing:** The area available for sale will be auctioned as two leases, Lease OCS-A 0498 [South Lease Area (South LA)] and Lease OCS-A 0499 [North Lease Area (North LA)]. The South LA consists of 160,480 acres and the North LA consists of 183,353 acres. The total area is approximately 343,833 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas can be found in Addendum “A” of the proposed leases, which BOEM has made available with this notice on its website at: <http://www.boem.gov/New-Jersey/>

**Map of the Areas Offered for Leasing:**

A map of the North and South LAs, GIS spatial files, and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM’s web site at: <http://www.boem.gov/New-Jersey/>.

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia, 20166, Phone: (703) 787-1300, Fax: (703) 787-1708.

**Potential Future Restrictions to Minimize Conflicts with Vessel Traffic:**

Prospective bidders should note that certain sub-blocks (or portions thereof) in the North and South LAs may not be available for future development (i.e., installation of wind facilities) because of navigational safety concerns. Reductions or limitations to

development in the North or South LAs, if any, will be determined at the COP stage, once BOEM and USCG have reviewed the Lessee’s site-specific navigational risk assessment.

First, at the New Jersey Intergovernmental Task Force meeting on December 18, 2012, the United States Coast Guard (USCG) presented an analysis of tug, towing and barge traffic that currently transits through the New Jersey WEA. USCG’s presentation discussed potential safety implications and possible changes in traffic patterns to the extent that vessels reroute around the New Jersey WEA once development occurs. USCG identified the OCS Blocks listed in Table 1 as blocks of highest concern. These blocks represent 6.8% of the South LA.

Table 1. South Leasing Area: Blocks of Primary Concern to USCG

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub-Block</b>
Wilmington	NJ18-02	7080	All Sub-Blocks
Wilmington	NJ18-02	7030	B,C,D,E,F,G,H,I,J,K,L,M,N,O,P

Additionally, during the New Jersey PSN comment period, BOEM received comments from the American Waterways Operators (AWO) expressing concern that the western boundary of the New Jersey WEA does not allow for a sufficiently wide two-way near-shore corridor for tug and barge vessels to navigate safely. AWO has argued that tug and barge vessels would have a sufficiently wide near-shore corridor along the New Jersey coast if the OCS Blocks listed in Tables 2 and 3 were not developed. These blocks represent 6.6% of the North LA and 15.7% of the South LA, and there is some overlap with the OCS Blocks identified in Table 1 above.

Table 2. North Leasing Area: Blocks of Concern to AWO

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub-Block</b>	<b>Leasing Area</b>
Wilmington	NJ18-02	6389	C,D,G,H,K,L,O,P	North
Wilmington	NJ18-02	6438	D,G,H,K,L,O	North
Wilmington	NJ18-02	6439	A,B,E,I	North
Wilmington	NJ18-02	6488	A,B,E,I,M	North
Wilmington	NJ18-02	6636	C,D,G,H	North
Wilmington	NJ18-02	6735	C,D,G,H,K,	North
Wilmington	NJ18-02	6784	K,L,O	North

Table 3. South Leasing Area: Blocks of Concern to AWO

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub-Block</b>	<b>Leasing Area</b>
Wilmington	NJ18-02	6833	C,D,F,G,H,I,J,K,L,M,N,O,P	South
Wilmington	NJ18-02	6834	I	South
Wilmington	NJ18-02	6883	A,B,E,F,I,J	South
Wilmington	NJ18-02	6932	A,B,C,D,E,F,G,H	South
Wilmington	NJ18-02	6931	H,K,L,N,O,P	South
Wilmington	NJ18-02	6982	I,J,M	South
Wilmington	NJ18-02	7030	B,C,D,E,F,G,H,I,J,K,L,M,N,O,P	South
Wilmington	NJ18-02	7031	I,J,M,N	South
Wilmington	NJ18-02	7080	A,B,C,D,E,F,G,H,I,J,K,M,N	South

Wilmington	NJ18-02	7081	A,B,E	South
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Maps identifying these blocks and sub-blocks are available on BOEM's website at: <http://www.boem.gov/New-Jersey/>.

**Potential Future Restrictions to Minimize Conflicts with Active Undersea Cables:**

Potential bidders should note that certain sub-blocks (or portions thereof) in the North LA may not be available for future development (i.e., installation of wind facilities) because of the presence of active subsea cables.

The U.S. Department of State has identified four active subsea cables that are present in the North LA. BOEM has not determined the degree to which subsea cables will interfere with offshore wind facility operations or the associated infrastructure, but believes it is prudent to make potential lessees aware of potential conflicts and provide them with guidance on how such conflicts can be addressed. To this end, BOEM is presently revising its COP guidelines to include recommendations for engaging and coordinating with owners and operators of existing telecommunications cables. BOEM will determine at the COP stage if any site-specific mitigation is needed for the New Jersey LAs, once it has more detailed information.

Table 4 lists the sub-blocks where the active cables are present. These sub-blocks represent 6.41% of the North LA. Maps identifying these whole blocks and sub-blocks are available on BOEM's website at: <http://www.boem.gov/New-Jersey/>.

Table 4. North Leasing Area: Blocks Traversed by Active Subsea Cables

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub-Block</b>
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Wilmington	NJ18-02	6438	O
Wilmington	NJ18-02	6488	C, D
Wilmington	NJ18-02	6489	A,B,C,D
Wilmington	NJ18-02	6588	A,B,C,D,F,G,H
Wilmington	NJ18-02	6539	I,J,K,M,N,O,P
Wilmington	NJ18-02	6589	A,B,C,D,E,F,G,H,I,J,K,L,

### **Potential Future Restrictions to Minimize Conflicts with Commercial Fishing**

#### **Grounds:**

BOEM received comments in response to the PSN regarding potential conflicts with commercial fishing grounds in the proposed leasing areas. Although BOEM is retaining these fishing areas in the LAs, potential bidders should be aware that BOEM will be gathering additional data and may develop mitigation measures to minimize impacts. BOEM has completed preliminary work with NMFS Northeast Fisheries Science Center to characterize fishing activity in BOEM's wind energy areas. Results for the New Jersey LAs indicate the potential for economic impacts, particularly to those vessels conducting dredge activities for surf clams and ocean quahog. BOEM will encourage the sale winners to participate in discussions that the Bureau will hold with NMFS, the Mid-Atlantic Fisheries Management Council, the Mid-Atlantic Regional Council on the Ocean, and other interested stakeholders to further characterize fishing activity offshore New Jersey and develop site-specific best management practices as lease activities progress. These discussions may result in mitigation measures in key fishing grounds to offset impacts to fishermen using the area.

BOEM also received comments from the fishing industry in response to the PSN recommending that its New Jersey leases stipulate that lessees must hire a fisheries liaison to reduce potential multiple use conflicts. BOEM's 2007 Record of Decision (ROD) for the OCS Alternative Energy and Alternate Use Program adopted a series of best management practices (BMPs), one of which states that "lessees and grantees shall work cooperatively with commercial/recreational fishing entities and interests to ensure that the construction and operation of a project will minimize potential conflicts with commercial and recreational fishing interests." The ROD also states that BOEM may choose to incorporate one or more of its identified BMPs into its leases as required stipulations.

Between 2012 and 2014, BOEM collaborated with numerous stakeholders in the fishing and offshore wind industries to develop additional BMPs in furtherance of its goal of eliminating/minimizing potential multiple use conflicts between offshore renewable energy developers and the fishing industry. As a result of this effort, BOEM concluded that it would be beneficial for a lessee to utilize both a fisheries liaison and fisheries representative during the lessee's plan development process. Therefore, BOEM recommends that lessees utilize a fisheries liaison and fisheries representative during the development of their plans to facilitate cooperation with the fishing industry. However, given the benefits of preserving lessee flexibility and the lack of project-specific information available at this juncture, BOEM is not including stipulations requiring the use of a fisheries liaison in the leases to be offered in its New Jersey lease sale.

**Withdrawal of Blocks:** BOEM reserves the right to withdraw portions of the LAs prior to its execution of a lease based upon relevant information provided to the Bureau.

**Lease Terms and Conditions:** BOEM has included specific terms, conditions, and stipulations for the OCS commercial wind leases to be offered through this sale. BOEM will require compliance with additional terms and conditions associated with approval of a SAP or COP as necessary. Each lease is available on BOEM's website at: <http://www.boem.gov/New-Jersey/>. Each lease includes the following seven attachments:

- Addendum "A" (Description of Leased Area and Lease Activities);
- Addendum "B" (Lease Term and Financial Schedule);
- Addendum "C" (Lease Specific Terms, Conditions, and Stipulations);
- Addendum "D" (Project Easement);
- Addendum "E" (Rent Schedule);
- Appendix A to Addendum C: (Incident Report: Protected Species Injury or Mortality); and
- Appendix B to Addendum C: (Required Data Elements for Protected Species Observer Reports).

Addenda "A", "B", and "C" provide detailed descriptions of lease terms and conditions. Addenda "D" and "E" will be completed at the time of COP approval or approval with modifications.

The most recent version of BOEM's renewable energy commercial lease form (BOEM-0008) is available on BOEM's website at: <http://www.boem.gov/BOEM-OCS-Operation-Forms/>.

**Plans:** Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 12 months of lease issuance. If the leaseholder intends to continue its commercial lease with



an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

BOEM is aware that long-term electrical offtake mechanisms (e.g., power purchase agreements (PPAs), offshore renewable energy certificates (ORECs)) are a critical component to providing revenue certainty and attracting financing for commercial offshore wind projects. BOEM may consider a lessee's progress in obtaining such mechanisms when evaluating requests for additional time to extend the preliminary or site assessment term of their commercial lease pursuant to 30 CFR 585.235(b).

**Lease Renewals:** Pursuant to 30 CFR 585.425, a lessee may obtain a renewal of the operations term of its lease before the lease terminates. BOEM is aware that lessees may wish to build out their LA in phases due to their size, and that lessees may propose to construct and operate one or more phases after significant portions of the operations terms have lapsed. BOEM will consider a lessee's proposed plans and progress in completing secondary phases when reviewing a lessee's renewal request.

**Financial Terms and Conditions:** This section provides an overview of the annual payments and financial assurance that each lessee must provide.

**Rent:** The first year's rent payment of \$3 per acre is due within 45 days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the "Lease Anniversary"). Once the first commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.*, not generating electricity. However, instead of geographically dividing the LA into acreage that is "generating" and acreage that is "non-generating," the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet

in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee's entire LA at the rental rate of \$3 per acre.

For example, for an 183,353 acre lease (the size of the entire North LA), the rent payment will be \$550,059 per year if no portion of the leased area is authorized for commercial operations. If 300 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and its most recent approved COP specifies a maximum project size of 500 MW, the rent payment will be \$220,024. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows:

$$200\text{MW}/500\text{MW} \times (\$3/\text{acre} \times 183,353 \text{ acres}) = \$220,024.$$

If the lessee submits an application for relinquishment of a portion of its lease area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the LA. Later relinquishments of any LA will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide

and centered on the transmission cable is \$70 per statute mile. For any additional acreage required, the lessee must also pay the greater of \$5 per acre per year or \$450 per year.

**Operating Fee:**

For purposes of calculating the initial annual operating fee payment and pursuant to 30 CFR 585.506, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for a 100 MW wind facility operating at a 40% capacity (i.e., capacity factor of 0.4) with a regional wholesale power price of \$40/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{Power Price} \times 0.02 = \$280,320$$

***Operating Fee Rate:*** The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to BOEM as an annual

operating fee. For the LAs in this sale, this fee is set at 0.02 (i.e., 2%) during the entire life of commercial operations.

***Nameplate Capacity:*** Nameplate capacity is the maximum rated electric output, expressed in MW, that the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity applicable at the start of each year of commercial operations on the lease. For example, if the lessee has 20 turbines in commercial operation, and each is rated by the design manufacturer at 5 MW, the nameplate capacity of the wind facility would be 100 MW.

***Capacity Factor:*** The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered will always be less than the theoretical 100% capacity, largely because of the variability of wind speeds, transmission line loss, and down time for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (i.e., where the lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity. BOEM has set the capacity factor for the year in which commercial operations commence and the six full years thereafter at 0.4 (i.e., 40%). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every

five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

***Wholesale Power Price Index:*** Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the PJM West power market for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis.

**Financial Assurance:**

Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515-.516, the provisional winner must provide an initial lease-specific bond, or other approved means of meeting the lessor's initial financial assurance requirements. A provisional winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms can be found in Addendum “B” of the proposed leases, which BOEM has made available with this notice on its website at: <http://www.boem.gov/New-Jersey/>.

**Bid Deposit:** A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than October 20, 2015, each qualified bidder must have submitted a bid deposit of \$450,000. Any qualified bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Each bidder must fill out the Bidder’s Financial Form referenced in this FSN. BOEM has also made a copy of the form available with this notice on its website at: <http://www.boem.gov/New-Jersey/>. BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in *pay.gov* (if it has not already done so). Bidders may then use the Bid Deposit Form on the *pay.gov* website to leave a deposit.

BOEM will not consider BFFs submitted by qualified bidders for previous lease sales to satisfy the requirements of this auction. BOEM will also only consider BFFs submitted after the deadline if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder’s control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative who has been identified in the qualifications package on file with BOEM as authorized to bind the company.

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial

obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to non-winners.

**Minimum Bid:** The minimum bid is the lowest price that BOEM will accept as a winning bid for a LA. BOEM has established a minimum bid per acre of \$2.00 for this lease sale. Accordingly, the minimum bids will be \$320,960 for Lease OCS-A 0498 and \$366,706 for Lease OCS-A 0499.

### **Auction Procedures:**

#### **Summary of Auction Format**

As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM will conduct this lease sale under a multiple-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and non-monetary factors, or “variables,” in determining the outcome of the auction. BOEM will appoint a panel of three BOEM employees to review the non-monetary packages and verify the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel plans to meet to consider non-monetary packages on November 5, 2015. At this meeting, the panel will determine whether any bidder has earned a non-monetary credit (such as by submitting legal documentation that it holds a valid PPA or OREC) to be used during the auction and, if so, the value of that credit. The panel also will help determine the winning bids for each LA in accordance with the procedures described in this FSN.

As described below, BOEM has updated the auction details previously described in the PSN (79 FR 42361): A bidder can now bid on and win only one of the two LAs. This change was made following receipt and assessment of comments made on the PSN,

as described in BOEM's *Response to Comments and Explanation of Changes* document, which can be found at the following URL: <http://www.boem.gov/New-Jersey/>.

Only qualified bidders who submit the required bid deposit are authorized to bid in the sale. BOEM's asking prices in the opening round will be the minimum bids for each LA.

The auction will balance consideration of two variables: (1) a cash bid, and (2) a non-monetary credit. These two variables comprise the multi-factor bid (or "as-bid" auction price), as reflected either in a bidder submitting a "live" bid (i.e., one that meets BOEM's asking price) or offering its own "intra-round" bid subject to certain conditions (described more fully below).

Bidding continues in successive rounds as long as at least one LA had two or more live bids in the previous round. The bidding ends at the round in which both LAs have one or zero live bids. This triggers the two-stage award part of the auction, as discussed below.

All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of each of the bids they submit.

### **Overview of the Multiple-Factor Bidding Format Proposed for this Sale**

BOEM has chosen to adopt a multi-round, multiple-factor auction format, pursuant to 30 CFR 585.220(a)(4). Under this format, BOEM may consider a combination of factors as part of each bid. The multiple-factor format provides BOEM flexibility in administering the auction. The regulations leave to BOEM the determination as to how to administer the multiple-factor auction format in order to "ensure a fair return to the United States" under OCSLA, 43 U.S.C 1337(p)(2)(A).



Under the format for this sale, a bidder may submit a bid proposal, i.e., a multiple-factor bid, on only one LA per round. The multiple-factor bid made by a particular bidder in each round represents the sum of a non-monetary credit and a monetary (cash) amount. The non-monetary portion of each bid consists of a credit of up to 25% of BOEM's last asking price met by the bidder for a given LA. This credit will be recalculated and applied throughout the auction in each round as a form of imputed payment against the LA's asking price in a bidder's multiple-factor bid. More details on the non-monetary factors are found in the "Credit Factors" section below.

The auction continues for both LAs as long as there are two or more competing live bids for either or both LAs. At the end of each round, BOEM will share with the bidders the number of live bids associated with each LA and the asking prices in the next round.

This auction format enables both consideration of more than one bidding factor and enhanced competition among bidders for lease areas. The auction format also allows bidders to adjust their bidding strategies and bidding targets in real time as the auction proceeds through successive rounds of bidding. Accordingly, BOEM has concluded that this auction format will enhance competition and reduce bidder uncertainty more effectively than other available auction formats.

**Credit Factors:**

Prior to the auction, BOEM will convene a panel pursuant to 30 CFR 585.222(d) to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit. To qualify for the credit, bidders must submit non-monetary packages that meet the criteria outlined in the "Credit Factor Definitions" section below. The only non-monetary credits that BOEM will consider in

this auction are a New Jersey OREC award and a PPA. In order to receive one of these credits, a bidder must be legally, technically, and financially qualified to acquire a commercial OCS wind lease, and must not be affiliated with another bidding entity seeking credit for the same PPA or qualified application for a New Jersey OREC. Any single PPA or OREC cannot be used by more than one bidder in the auction. The panel will review all non-monetary packages submitted and will determine whether bidders have established that they are qualified to receive a credit—and the percentage at which that credit will apply. The auction will proceed whether or not any bidders have qualified for a non-monetary factor.

A bidder will earn the full 25% credit if the BOEM panel determines the bidder has either a New Jersey OREC Order or a PPA totaling 250 MW or more. Smaller credit percentages may be earned for holding a valid PPA totaling less than 250 MW. BOEM will inform bidders by email before the monetary stage of the auction regarding the percentage credit that will be applied to their bid.

The bid credit will be bundled into each bid. In each round, the auction system will show each bidder how their as-bid auction price is affected by the credit imputed to its bid. For an intra-round bid (as defined below), the credit will be based on the previous round's asking price, not on the additional amount above the previous round's asking price that may be offered in an intra-round bid.

### **Bid Deposit**

To be eligible to offer a bid on a LA at the start of the auction, BOEM must receive a bidder's bid deposit of \$450,000 by October 20, 2015. A bidder's bid deposit will be used by BOEM as a down payment on the winning bid submitted by the bidder, should it be awarded a lease.

## **Details of the Auction Process**

The auction will be conducted in a series of rounds. At the start of each round BOEM will state an asking price for the North LA and an asking price for the South LA. If a bidder is willing to meet the asking price for one of the LAs, it will indicate its intent by submitting a bid equal to the asking price. Any bid equal to the asking price is considered a “live bid.” If the bidder has earned a credit, it will meet the asking price by submitting a multiple-factor bid — that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price.

To participate in the next round of the auction, a bidder must submit a live bid for one of the LAs in each previous round.

As long as there are two or more live bids for at least one LA, the auction moves to the next round. BOEM will raise the asking price for such LA by an increment determined by BOEM. Asking price increments will be determined based on a number of factors, including (but not necessarily limited to) the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments if it determines that different increments of asking prices are warranted.

A bidder may switch its live bid from one LA to the other in the current round only if its bid from the previous round was contested—i.e., a bidder cannot switch from LA-1 to LA-2 unless there was at least one other bid for LA-1 in the last round. If the bid was not contested in the previous round, the bidder cannot switch LAs, and its previous round bid will be carried forward to the next round. If another bidder places a live bid on LA-1 later in the auction, BOEM will stop automatically carrying forward the previously

uncontested bid on that LA. The bidder that placed the previously carried forward bid is then free to bid on either lease area in the next round at the new asking prices.

A bidder remains eligible to participate in the auction if it has submitted a live bid in the prior round, or has its uncontested bid carried forward by BOEM to the current round.

Between rounds, BOEM will disclose to all bidders eligible to bid in the next round: (1) the number of live bids for each LA in the previous round of the auction (i.e., the level of demand); and (2) the asking price for each LA in the upcoming round of the auction. As discussed below, if a bidder decides to stop bidding further when its bid is contested, there are still circumstances where the bidder could still win (e.g., if the winning bid is disqualified at the award stage of the auction). If this happens, the bidder may be bound by its bid (and potentially obligated to pay up to the full amount) until the auction results are finalized.

#### *Intra-Round Bidding*

A bidder may submit an intra-round bid that is higher than the previous round's asking price and less than the current round's asking price. An intra-round bid must consist of a single offer price for the same LA from the bidder's live bid in the previous round. An intra-round bid in this sale is equivalent to an exit bid, since it reduces the bidder's eligibility by one LA, and the bidder only has an eligibility of one LA at the start of the auction. During the auction, the intra-round bid will be seen only by BOEM and not by other bidders.

BOEM will not consider intra-round bids the same way as it does live bids for the purpose of determining whether to increase the asking price for a particular LA or to end the auction. A LA with only intra-round bids in a given round will not have its asking

price raised in the next round. As long as both LAs have one or zero live bids, the auction is over, regardless of the number of intra-round bids on each area. For example, if each LA has one live bid and multiple intra-round bids, the auction will end. All intra-round bids submitted during the auction will be preserved, and the highest intra-round bid for a LA in this sale may be determined to be the provisionally winning bid for that LA under certain circumstances.

### **Determining Provisional Winners**

After the bidding ends, BOEM will determine the provisionally winning bids through a two-stage award process. During this process, BOEM and its panel will assess the two components of the multiple-factor bids, determine the provisional winners for each LA and identify the applicable bid prices to be paid by the winners for the LA they won. The panel will also validate the results of the auction in a timely manner. Provisional winners may be disqualified if they are subsequently found to have violated auction rules or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

In Stage 1, BOEM will determine if either or both LAs have one live bid. BOEM will designate the provisional winner of a LA to be that bidder who offers the only live bid for that LA in the final round of the auction. As a result, this bidder is provisionally assured of winning the LA included in its final round bid, regardless of any other prior-to-final round live bids or intra-round bids in any round. If both LAs are awarded to bidders in Stage 1, BOEM need not proceed to Stage 2.

In Stage 2, BOEM will determine if the LA(s) not awarded in Stage 1 can be awarded based on intra-round bids and prior round live bids. In making this determination, BOEM will award leases to the bid(s) that maximize(s) the total as-bid prices, subject to the condition that a bidder can win at most one LA. If there is a

provisional winning bidder for a LA in Stage 1, all bids by that bidder on the other LA will be excluded from consideration in selecting the provisional winning bidder in Stage 2.

The award procedures in Stage 2 could result in a tie if, for example, two bidders submit identical intra-round bids or prior round live bids for the same LA. In such cases, BOEM will resolve the tie by randomized means.

If a bidder submits a bid that BOEM and its panel determine to be a provisionally winning bid, the bidder will be expected to sign the applicable lease documents and submit the full cash payment due within 10 days pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise fails to comply with applicable regulations or terms of this FSN. In that case, that bidder will forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

### **Additional Information Regarding the Auction Format**

#### ***Credit Factor Definitions:***

The definitions below will apply to the factors for which bidders may earn a credit.

A *Power Purchase Agreement (PPA)* is any legally enforceable long-term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. Except where approval of the PPA would not otherwise be

required by the New Jersey Board of Public Utilities, such approval must be obtained before a PPA will be eligible for credit in a non-monetary package in BOEM's lease sale. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity and/or energy from the project, as defined in the terms and conditions set forth in the PPA. To qualify, a PPA must contain the following terms or supporting documentation:

- (i) A complete description of the proposed project;
- (ii) Specification of the energy products to be supplied by the Generator;
- (iii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;
- (iv) A timeline for permitting, licensing, and construction;
- (v) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;
- (vi) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;
- (vii) The term for the long term contract;
- (viii) Details of the firm cost recovery mechanism approved by the State's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA;
- (ix) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and
- (x) Copies of or citations to interconnection filings related to the PPA.

If the panel determines a bidder has executed a PPA for at least 250 MW, it will be eligible for the entire 25% credit. If the panel determines a bidder has executed a PPA for an amount less than 250 MW, the bidder may still be eligible for a non-monetary credit proportional to the PPA's fraction of 250 MW. The smaller percentage for a partial credit will be calculated according to the following formula:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 250 MW
- Full Credit = 25%
- Partial PPA = amount (less than 250 MW) of power under contract

A *New Jersey OREC Order* is a qualified application for an Offshore Renewable Energy Certificate (OREC) representing the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project that has been approved or conditionally approved by the New Jersey Board of Public Utilities (NJ BPU).

The NJ BPU defines a qualified offshore wind project as a wind turbine electric generation facility in the Atlantic Ocean and connected to the electrical transmission systems in New Jersey, including the associated transmission-related interconnection facilities and equipment.

If the panel determines a bidder has secured a New Jersey OREC order satisfying the criteria outlined in the New Jersey Offshore Wind Economic Development Act ([2010](#)), the bidder will be eligible for the entire 25% credit.

### ***Bidder Authentication***



Prior to the auction, the Auction Manager will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain digital authentication tokens for each authorized individual allowing access to the auction web site. The tokens will be mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. ***Bidders are to ensure that each token is returned within three business days following the auction.*** An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

### ***Timing of Auction***

The auction will begin at 9:00 a.m. ET November 9, 2015. Bidders may log in as early as 8:00 a.m. on that day. We recommend that bidders log in no later than 8:30 a.m. to ensure that any login issues are resolved prior to the start of the auction. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;

- Round bidding ends and the recess begins;
- During the recess, previous round results and the next round's asking prices are posted;
- Bidders review the previous Round results and prepare their next Round bids;
- Next Round bidding begins.

The first round will last about 30 minutes, and subsequent rounds may be shorter.

Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are tentative.

Bidders should consult the auction schedule on the bidding website just before and during the auction for updated times. Bidding may continue until about 6:00 p.m. for each day of the auction. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. BOEM will use the messaging system for auction schedule changes and other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled ending time to place bids. Bidders should bid according to the procedures described in both this notice and the Auction System Technical Supplement. No information about bidding during the round is available until the round has closed and results have been posted, so there is no tactical advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the Auction System Technical Supplement available on BOEM's website at: <http://www.boem.gov/New-Jersey/>. The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

### ***Alternate Bidding Procedures***

Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's website at: <http://www.boem.gov/New-Jersey/>.

In order to be authorized to use an Alternative Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain the reasons for which he/she is forced to place a bid using the Alternate Bidding Procedures. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

***If bidders need to submit an Alternate Bidding Form, they are strongly encouraged to do so before the round ends.***

**Rejection or Non-Acceptance of Bids:** BOEM reserves the right and authority to reject or not accept any and all bids that do not satisfy the requirements and rules of the auction, this FSN, and all applicable regulations and statutes.

### **Anti-Competitive Behavior Review:**

Bidding behavior in this sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of bids and the issuance of leases,

BOEM will “allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale.” 43 U.S.C. 1337(c). If a bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject the provisionally winning bid. Compliance with BOEM’s auction procedures and regulations is not an absolute defense to violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An express or tacit agreement among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for a particular LA;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that doing so would be inconsistent with the antitrust laws. *See* 43 U.S.C. 1337(c).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see:

<http://www.justice.gov/atr/public/business-resources.html>, or consult legal counsel.

**Process for Issuing the Leases:** Once all post auction reviews have been completed to BOEM’s satisfaction, BOEM will issue three unsigned copies of the lease to each provisionally winning bidder. Within 10 business days after receiving the lease copies, each provisionally winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at:

<http://www.boem.gov/New-Jersey/>.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisional winning bidder's payment.

BOEM may extend the ten business day deadline for executing the lease on the bidder's behalf, filing the required financial assurance, and/or paying the balance of the bonus bid if it determines the delay was caused by events beyond the provisional winning bidder's control.

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case the winning bidder will forfeit its bid deposit.

In the event that a provisional winner does not execute and return its lease according to the instructions in this notice, BOEM reserves the right to reconvene the panel to determine whether it is possible and desirable to identify a new provisionally winning bidder.

Within 45 days of the date that the provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at:

<https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>.

Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments," available on BOEM's website at: <http://www.boem.gov/New-Jersey/>.

**Non-Procurement Debarment and Suspension Regulations:** Pursuant to regulations at 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

**Force Majeure:** The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (e.g., earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM website at: <http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

Bidders should call 703-787-1320 if they have concerns.

**Appeals:** The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

**Protection of Privileged or Confidential Information:**

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to “trade secrets and commercial or financial information that you submit that is privileged or confidential.” 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential aggregate summaries of otherwise confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential the legal title of the commenting entity (e.g., the name of your company).

Dated: September 1, 2015.

Abigail Ross Hopper,  
Director, Bureau of Ocean Energy Management.

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